Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

TERM,

NO. 79-1046

EDWARD A. SMITH,

Petitioner,

v.

SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

James J. Carras
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Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
SIXTH CIRCUIT

Petitioner, Edward A. Smith, Plaintiff-Appellant in the Court below, prays that a writ of certiorari issue to review the the Order and Mandate entered by the United States Court of Appeal for the Sixth Circuit in this case.

OPINIONS BELOW

Two Orders and a Mandate were rendered which are all exactly the same except for filing dates of October 11,1979,October 31,1979.(Mandate issued November 28,1979). These are attached hereto as Appendix.

JURISDICTION

Orders were entered on October 11,1979 and October 31,1979 and the Mandate issued on November 28,1979. The jurisdiction of this Court is invoked under 28 USC Sec. 1254(1).

QUESTIONS PRESENTED

Petitioner sought disability insurance benefits under 42 USC Sec. 416, 423 and 1381. The Administrative Law Judge found that Petitioner was not under a disability for the reason that Petitioner could perform sedentary work from the absence of clinical evidence. The District Court held that the Administrative Law Judge had applied an improper legal standard but then the District Court made an independent review of the record and found that the Petitioner was not disabled within the meaning of 42 USC, Sec. 423. The Sixth Circuit Court of Appeals in its Order agreed with the District Court. The questions presented are:

(1) Whether the Sixth Circuit Court of Appeals decision is contrary to the Statute herein and numerous cases that the Federal Courts function in the Social Security Disability cases is to review questions of law only?

(2) Whether the present decision of the Sixth Circuit Court of Appeals is contrary to its holdings that when there is no substantial contradictory evidence presented, the treating physician's expert opinion is binding upon the Secretary?

STATEMENT OF THE CASE

Petitioner was found not able to return to to his former employment. A treating physician's expert opinion (Dr. Bridges) was that Petitioner was totally disabled. The Administrative Law Judge disregarded this opinion on the basis there was an absence of clinical evidence. This was erroneous first because Dr. Bridges did have clinical findings in front of him and secondly the requirement of clinical findings is improper. There was no substantial evidence to the contrary that Petitioner is able to perform sedentary, non-strenuous, unhurried employment within a 12 month period with suitable therapy.

The District Court and the Court of Appeals in effect have both held that the 42 USC Sec. 405(g) gave them on review the right to make their own appraisal of evidence. In this and among other points it is Petitioner's claim that serious and gross errors of law have been committed for which certiorari is sought.

STATUTE INVOLVED

The pertinent provision of the federal statute involved is 42 USC 405(g) as follows:

". . . The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the

by the Secretary or a decision is rendered under subsection (b) of this section which is adverse to an individual who was a party to the hearing before the Secretary, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) of this section, the court shall review only the question of conformity with such regulations and the validity of such regulations . . ."

REASONS FOR GRANTING THE WRIT

I.

THE SIXTH CIRCUIT COURT OF APPEALS DECISION IS CONTRARY TO THE PLAIN MEANING OF 42 USC 205(g) AND UNANIMOUS HOLDINGS IN EVERY CIRCUIT.

The Court of Appeals erroneously decided an important question of the scope of the review of the administrative record of a social security disability case. It has in effect considered the administrative record de novo and therefore contrary to the following cases, listed by Circuit:

FIRST CIRCUIT

Rodriguez v Celebrezze, 349 F2d 494

SECOND CIRCUIT

Franklin v Secretary of Health, Education and Welfare, 393 F2d 640

THIRD CIRCUIT

Palmer v Celebrezze, 334 F2d 306

FOURTH CIRCUIT

Sabbagha v Celebrezze, 345 F2d 509
Snyder v Ribicoff, 307 F2d 518
Thacker v Gardner, 387 F2d 387 certiorari denied 390 US 1017, 88 SCt 1272, 20 LE 2d 168

FIFTH CIRCUIT

Mann v Gardner, 380 F2d 182
Ortego v Weingerger, 516 F2d 1005

SIXTH CIRCUIT

Eastman v Gardner, 373 F2d 481 certiorari denied 389 US 844, 88 SCt 91,19 LEd 2d110
Lane v Gardner, 374 F2d 612
Nelms v Gardner, 386 F2d 971
Rose v Cohen, 406 F2d 753
Walters v Gardner, 397 F2d 89

SEVENTH CIRCUIT

Feil v Gardner, 402 F2d 481
Jones v Celebrezze, 331 F2d 226

EIGHTH CIRCUIT

Celebrezze v Bolas, 316 F2d 498
Klug v Weinberger, 514 F2d 423
Nichols v Gardner, 361 F2d 963

NINTH CIRCUIT

Dean v Gardner, 393 F2d 327
Paul v Celebrezze, 337 F2d 352 certiorari denied 381 US 906, 85 SCt 1452,14 LEd 2d 287

TENTH CIRCUIT

Garney v Fleming, 279 F2d 56

The District Court confessed the Secretary of Health, Education and Welfare applied an improper standard of law and then proceeded to make its own finding of fact which the Court of Appeals confessed to being aware of it in its Order of either October 11,1979 or October 31,1979.This decision is unanimously opposed by decisions in all the Circuits and Petitioner has not been able to find one decision in support of this holding and it is contended that respondent has not cited such a case in any of his briefs to the District Court, the Court of Appeals, written or oral. Petitioner has cited the above cases in support of his contention the court in review is limited to purely questions of law.

The finding of facts by the administrative law judge were not supported by substantial evidence with respect to the ability of the Petitioner to engage in sedentary, unhurried employment, being the result of the application of an improper legal standard which the District Court and the Sixth Circuit Court of Appeals both concede in their decisions. Their decisions are unfathomable to Petitioner in that they are not only inexplicable under the unanimous holdings of all the circuits but also contrary to the plain words of the statute quoted herein 42 USC 405(g).

Petitioner respectfully submits that the holding of Saunders v Shaw, 244 US 317, 320 (1917) wherein Justice Holmes says:

"The denial of rights given by the 14th Amendment need not be by legislation . . . We do not see what more he would have done."

is without question applicable here. Without this Honorable Court's assistance a bizarre, peculiar and unjust result will triumph.

In addition Petitioner submits that the language of Ohio Bell Teleph Co v Public Utilities Com, 301 US 292, 302, (1936) at page 302 is emphatically appropriate and frighteningly to the point:

"What was done by the Commission is subject, however, to an objection even deeper . . . There has been more than an expansion of the concept of notoriety beyond reasonable limits. From the standpoint of due process--the protection of the individual against arbitrary action--a deeper vice is this, that even now we do not know the particular or evidential facts of which the Commission took judicial notice and on which it rested its conclusion. Not only are the facts unknown; there is no way to find them out . . ."

Petitioner is left literally and figuratively astounded by the reasoning of both courts and respectfully submits that due process does and should require more, even from our Honorable Courts.

II

THE PRESENT DECISION OF THE SIXTH CIRCUIT COURT OF APPEALS IS CONTRARY TO ITS HOLDINGS THAT WHEN THERE IS NOT SUBSTANTIAL CONTRADICTORY EVIDENCE PRESENTED, THE TREATING PHYSICIAN'S EXPERT OPINION IS BINDING UPON THE SECRETARY.

The law is clear in the Sixth Circuit that when no substantial contrary evidence is presented to the treating physician's

expert opinion that the claimant is disabled the Secretary is bound by such evidence Branham v Gardner, 383 F2d 614.

This holding is supported by the following cases: Alvarado v Califano, 605 F2d 35,; Bastien v Califano, 572 F2d 908, 912; Wyatt v Weinberger, 519 F2d 1285; and Gold v Secretary of Health, Education and Welfare, 463 F2d 38, 42.

CONCLUSION

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

JAMES J. CARRAS
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Bay City, Michigan 48706

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 77-1457

Filed
October 11, 1979
JOHN P. HEHMAN,Clerk

EDWARD A. SMITH,

Plaintiff-Appellant,

v.

SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Defendant-Appellee.

ORDER

Before: ENGLE, KEITH and MERRITT, Circuit Judges

Plaintiff-Appellant appealed from a judgment of the District Court affirming the Secretary's denial of disability benefits and supplemental security income benefits.

Plaintiff-Appellant filed applications for disability insurance benefits and supplemental security income (SSI) benefits on June 21,1974--both of which were denied initially and on reconsideration by the Bureau of Disability Insurance and the Social Security Administration after the Michigan State Agency found that plaintiff was not under a disability. Upon a de novo consideration of plaintiff's claims, the Administrative Law Judge found that

that plaintiff was not disabled and accordingly denied plaintiff the requested benefits.

Plaintiff appealed to the United States District Court for the Eastern District of Michigan, praying that the Administrative Law Judge's holding be reversed on the ground that the Administrative Law Judge misapplied the law as to the Secretary's burden of proof--specifically, the Administrative Law Judge's findings were based on the absence of clinical evidence showing disability. The Administrative Law Judge found that although plaintiff was unable to engage in prolonged or strenuous physical activity, he was able to perform sedentary work. The District Court agree that the Administrative Law Judge misconstrued the Secretary's burden of proof, but granted the Secretary's motion for summary judgment after concluding that the Secretary had in fact met his burden, stating that "(f)rom an independent review of the record, the court finds substantial medical testimony that plaintiff is not presently disabled within the meaning of 42 U.S.C. Sec. 423."

After careful consideration of the record , and of claimant's argument on appeal,this Court is of the view that the judgment of the District Court denying claimant's disability benefits and supplemental security insurance benefits should be, and hereby is AFFIRMED.

ENTERED BY ORDER OF THE COURT

JOHN P. HEHMAN
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 77-1457

Filed
October 31, 1979
JOHN P. HEHMAN, Clerk

EDWARD A. SMITH,

Plaintiff-Appellant,

v.

SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Defendant-Appellee.

ORDER

Before: ENGLE, KEITH and MERRITT, Circuit Judges

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After careful consideration of the record , and of claimant's argument on appeal,this Court is of the view that the judgment of the District Court denying claimant's disability benefits and supplemental security insurance benefits should be, and hereby is AFFIRMED.

ENTERED BY ORDER OF THE COURT

JOHN P. HEHMAN
Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 77-1457

Filed
October 11, 1979
JOHN P. HEHMAN, Clerk

EDWARD A. SMITH,

Plaintiff-Appellant,

v.

SECRETARY OF HEALTH, EDUCATION AND WELFARE,

Defendant-Appellee.

/

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After careful consideration of the record , and of claimant's argument on appeal,this Court is of the view that the judgment of the District Court denying claimant's disability benefits and supplemental security insurance benefits should be. and hereby is AFFIRMED.

ENTERED BY ORDER OF THE COURT
JOHN P. HEHMAN
Clerk

Issued as Mandate:
November 28, 1979
COSTS: NONE
A TRUE COPY
Attest: JOHN P. HEHMAN, Clerk
By Barbara J. Burn Deputy Clerk